

TENNESSEE STATE BOARD OF EQUALIZATION  
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Proton Therapy Center, The	) Knox County
Property ID: 106D A 009.10	) Exempt No. 78025
Property ID: 1356589	) Exempt No. 84251
<i>Claim of Exemption</i>	)

*Initial Decision and Order*

*Statement of the Case*

This is a taxpayer appeal of an exemption application denial by the designee of the State Board of Equalization ("State Board"). The taxpayer applied to the State Board for exemption of the subject property on October 31, 2013. Following the initial denial letter on April 24, 2014, the taxpayer timely appealed.<sup>1</sup>

The undersigned administrative judge conducted the hearing on April 21, 2015, but left the record open until May 19, 2015 in order to allow the parties to provide additional information regarding the percentage of the subject facility leased to a non-exempt entity. Dr. Allen Meek, Melissa Williams, Chris Brown, Mike Sommi, and Dale Allen, Esq. appeared on behalf of the taxpayer. Barry Mathis and Charles Sterchi, Esq. appeared on behalf of the Knox County Property Assessor.

*Findings of Fact and Conclusions of Law*

The subject property included a cancer treatment center and associated tangible personal property, including highly sophisticated proton therapy equipment. The parties stipulated as to

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<sup>1</sup> The taxpayer submitted additional information to the State Board designee after the initial denial letter. On November 12, 2014, the designee issued a letter explaining why she remained steadfast in her opinion that the subject did not qualify for exemption.

how much of the subject real property was occupied and used by the taxpayer as opposed to how much of the subject real property was leased to a non-exempt tenant over time.

In a November 12, 2014 letter, the State Board designee explained the denial of the exemption as follows:

....In my opinion, the question of whether the subject property qualifies for exemption hinges primarily upon a finding that the organization is a charitable institution and that the subject property is used for a charitable purpose. The applicant contends that its entire purpose is the furtherance of charitable healthcare goals. *Baptist Hosp v. City of Nashville*, 3 S.W.2d 1059 (Tenn. 1928) made it clear that non-profit hospitals could qualify for exemption as charitable institutions. The Proton Therapy Center is not a non-profit hospital. Furthermore, *Downtown Hospital Association v. State Board of Equalization*, 760 S.W.2d 954 (Tenn. Ct. App. 1988) extended the charitable use exemption to licensed, non-profit healthcare facilities other than hospitals. As I mentioned in my initial determination letter, The Proton Therapy Center is not a licensed healthcare facility. Therefore, apart from the special status afforded to licensed, non-profit medical care providers, a charitable exemption must be founded on charity. The Proton Therapy Center does have a financial assistance policy [and has provided charity care equating to 9 to 10% of patient care revenue]. In my opinion, there is no evidence that the provision of treatment services at the facility is in any way based on charity, i.e., without the expectation of payment. In addition, it is not uncommon for for-profit facilities to, at some point, classify a portion of their services as "charity". In any case, Tennessee exemption law does not allow for a grant of a pro-rated exemption based on the percentage of charitable care provided. As I mentioned, the decision is based on whether an entity is a charitable "institution" and whether the use is a "charitable use". I could not find either in this case.

Finally, while there may be some educational and/or scientific activities that occur on the subject property, these activities are secondary to the organization's primary purpose of providing medical care related to the treatment of cancer. Therefore, I could not find that the activities elevated the entity to an educational or scientific "institution" as contemplated by T.C.A. § 67-5-212....

Article II, Section 28 of the Tennessee Constitution permits, but does not require, the legislature to exempt from taxation property which is "held and used for purposes purely religious, charitable, scientific, literary, or educational." Tenn. Code Ann. §67-5-212(a)(1) provides,

There shall be exempt from property taxation the real and personal property, or any part of the real or personal property, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and actually used by such institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the institution was created or exists. There shall further be exempt from property taxation the property, or any part of the property, owned by an exempt institution that is occupied and actually used by another exempt institution for one (1) or more of the exempt purposes for which it was created or exists under an arrangement in which the owning institution receives no more rent than a reasonably allocated share of the cost of use, excluding the cost of capital improvements, debt service, depreciation and interest, as determined by the board of equalization.

As the party seeking to change the State Board designee's initial determination, the taxpayer has the burden of proof in this administrative proceeding.<sup>2</sup>

At hearing, the taxpayer's extensive proof included expert testimony explaining the advantages of proton therapy cancer treatment and the taxpayer's charity care policy. Specifically, the taxpayer provided testimony as to how the proton therapy cancer treatment significantly reduced the suffering of the cancer patients; testimony of a grateful patient who had been provided successful cancer treatment without expectation of payment; and testimony to rebut the State Board designee's conclusion that the taxpayer provided an insignificant amount of charity care.

The State Board designee was correct that the charitable exemption does not extend to all endeavors by a healthcare-related entity or to healthcare or medicine in the generic sense.<sup>3</sup> Respectfully, however, the administrative judge does not agree that the subject can be meaningfully distinguished from "the licensed, non-profit healthcare facilities other than

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<sup>2</sup> State Board Rule 0600-1-.11(2).

<sup>3</sup> *City of Knoxville v. Ft. Sanders Hosp.*, 148 Tenn. 699, 257 S.W. 408, 408 (1924); *Baptist Mem'l Hosp. v. Couillens*, 176 Tenn. 300, 140 S.W.2d 1088 (1940) (cited with approval in *City of Nashville v. State Bd. of Equalization*, 210 Tenn. 587, 360 S.W.2d 458 (1962)); *Middle Tennessee Med. Ctr. v. Assessment Appeals Comm'n of State*, No. 01A01-9307-CH-00324, 1994 WL 32584 (Tenn. Ct. App. Feb. 4, 1994); *U.T. Med. Grp. v. City of Memphis*, No. 02A019405-CH-00115, 1995 WL 368821 (Tenn. Ct. App. June 20, 1995); State Board of Equalization Rule 0600-8-.03. *Compare Shared Hosp. Servs. Corp. v. Ferguson*, 673 S.W.2d 135 (Tenn. 1984).

hospitals” to which the courts had extended the charitable hospital exemption according to the State Board determination.

In this case, the taxpayer was required to obtain a certificate of need prior to the construction of the subject ambulatory surgical treatment center. Certificates of need are required for, among other things, construction and expansion of health care institutions, which include a number of licensed healthcare facility types such as hospitals, nursing homes, and ambulatory surgical treatment centers.<sup>4</sup> That this particular nonprofit ambulatory surgical treatment center facility may have been deemed exempt from ongoing regulation<sup>5</sup> or that the licensing requirements may have been construed differently by the regulatory body seems to the administrative judge a distinction without a meaningful difference for *ad valorem* property tax exemption purposes.

With respect to the State Board designee’s concern about the amount of charity care provided, the unrebutted testimony showed that roughly half of the taxpayer’s total patients had received some form of financial assistance. Moreover, roughly 22% of the taxpayer’s total patients had been provided 100% financial assistance. The administrative judge finds the charity care provided by the taxpayer to its cancer patients was substantial.

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<sup>4</sup> Tenn. Code Ann. § 67-11-1602. Tenn. Code Ann. § 68-11-201(3) defines “ambulatory surgical treatment center” to include “a facility for the performance of surgical procedures.” Ostensibly, this definition applies only to Title 68, Chapter 11, Part 2, which governs the ongoing licensure and regulation of health and related facilities, and not explicitly to the construction and expansion of healthcare facilities under Title 68, Chapter 11, Part 16. However, a reading Tenn. Code Ann. § 68-11-201 in pari materia with Title 68, Chapter 11, Part 16, particularly the definition of “health care institution” found in Tenn. Code Ann. § 67-11-1602(7)(A), makes it evident that the legislature intended for the term “ambulatory surgical treatment center” to have the same meaning for the construction and the licensure of such a facility.

<sup>5</sup> For instance, Tenn. Comp. R. & Regs. 1200-08-10-.06(1)(a) provides,

Facilities restricted in services they provide, e.g. those that restrict services to radiation therapy or use of local anesthetics only, may be exempted from all or part of the requirements of this rule pertaining to laboratory services, food and dietetic services, surgical services, and anesthesia services.

Order

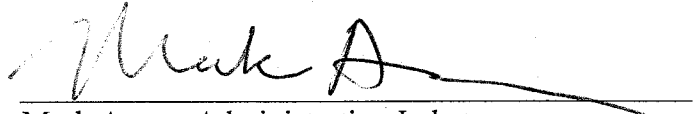
It is, therefore, ORDERED, effective October 31, 2013, the tangible personal property used by the taxpayer and the portion of the subject occupied by the taxpayer shall be treated as exempt. The administrative judge adopts the parties' stipulated figures regarding the portion of the subject occupied by the taxpayer from October 31, 2013 through the present. The taxpayer is required to promptly report to the assessor any material changes in the extent of the taxpayer's occupancy of the subject, and the assessor is authorized to adjust the pro rata exemption for the real property in accordance with material changes in the extent of the taxpayer's occupancy of the subject.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 17<sup>th</sup> day of August 2015.



Mark Aaron, Administrative Judge  
Tennessee Department of State  
Administrative Procedures Division  
William R. Snodgrass, TN Tower  
312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
Nashville, Tennessee 37243

**CERTIFICATE OF SERVICE**

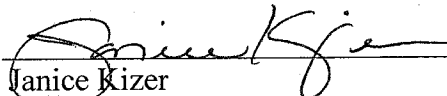
The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

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This the 17<sup>th</sup> day of August 2015.



Janice Kizer  
Department of State  
Administrative Procedures Division